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LAWRENCE V. ROBERTSON, JR.
ATTORNEY AT LAW

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2009 JUL 23 A 8:52

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ADMITTED TO PRACTICE IN:
ARIZONA, COLORADO, MONTANA,
NEVADA, TEXAS, WYOMING,
DISTRICT OF COLUMBIA

OF COUNSEL TO
MUNGER CHADWICK, P.L.C.

July 21, 2009

Docket Control
Arizona Corporation Commission
1200 West Washington
Phoenix, Arizona 85007

Re: Diablo Village Water Company and Thim Utility Co. - Application for authorization to sell and transfer water system assets to Metropolitan Domestic Water Improvement District and cancellation of their respective Certificates of Convenience and Necessity
Docket Nos. W-02309A-09-0095 and W-03293A-09-0095

To Whom It May Concern:

This letter is in response to a July 21, 2009 from Blessing N. Chukwu in the Commission's Utilities Division regarding the above-referenced subject. A copy of that letter is enclosed as Appendix "A" to this letter.

Enclosed as Appendix "B" to this letter is a copy the Commission's Decision No. 60974, as issued on June 19, 1998 in Docket No. W-03293A-97-0596. Thim Utility Co. believes that Decision No. 60974 provides that "evidence" or information requested by Ms. Chukwu in her aforesaid letter of July 21, 2009.

Please let me know if there are any questions regarding the enclosed documents.

Sincerely,

Lawrence V. Robertson, Jr.

Arizona Corporation Commission

DOCKETED

cc: Blessing Chukwu
Del Smith

JUL 23 2009

DOCKETED BY

ACC Docket Control

July 21, 2009

Page 2 of 2

Lyn Farmer

Brian Bozzo

Connie Walczak

Thim Utility Co.

Appendix “A”

July 21, 2009

Docket Nos.

W-02309A-09-0095

and W-03293A-09-0095

COMMISSIONERS
KRISTIN K. MAYES- Chairman
GARY PIERCE
PAUL NEWMAN
SANDRA D. KENNEDY
BOB STUMP



MICHAEL KEARNS
Interim-Executive Director

ARIZONA CORPORATION COMMISSION

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2009 JUL 21 A 9:25

July 21, 2009

ARIZONA CORPORATION COMMISSION
DOCKET CONTROL

Lawrence V. Robertson, Jr.
P. O. Box 1448
Tubac, Arizona 85646

RE: Diablo Village Water Company and Thim Utility Co. – Joint Application for authorization to sell and transfer water system assets to Metropolitan Domestic Water Improvement District and cancellation of their respective Certificates of Convenience and Necessity Docket Nos. W-02309A-09-0095 and W-03293A-09-0095

Dear Mr. Robertson:

In reference to the Joint Applicants' Comments filed on July 14, 2009, please provide evidence that Thim Utility Co. has a Certificate of Convenience and Necessity for Lazy B or that Thim Utility Co. has the authority to make the request for transfer of water system assets and cancellation of CC&N on behalf of Lazy B.

Please file your response to this Letter with Docket Control.

If you have any questions concerning this matter, please do not hesitate to contact me at 602-542-0840 or Dorothy Hains at 602-542-7274.

Very truly yours,

A handwritten signature in black ink, appearing to read "Blessing N. Chukwu".

Blessing N. Chukwu
Executive Consultant III

BNC

cc: Docket Control
Del Smith
Lyn Farmer
Brian Bozzo
Connie Walczak

Appendix “B”

July 21, 2009

Docket Nos.

W-02309A-09-0095

and W-03293A-09-0095

BEFORE THE ARIZONA CORPORATION COMMISSION

Arizona Corporation Commission

DOCKETED

JUN 19 1998

DOCKETED BY

mil

JIM IRVIN
COMMISSIONER - CHAIRMAN
RENZ D. JENNINGS
COMMISSIONER
CARL J. KUNASEK
COMMISSIONER

IN THE MATTER OF THE APPLICATION OF
THIM UTILITY COMPANY
FOR APPROVAL OF AN EXTENSION TO ITS
EXISTING CERTIFICATE OF CONVENIENCE
AND NECESSITY.

DOCKET NO. W-03293A-97-0596

DECISION NO. 60974

OPINION AND ORDER

DATE OF HEARING: March 24, 1998

PLACE OF HEARING: Tucson, Arizona

PRESIDING OFFICER: Jane L. Rodda

APPEARANCES: Robin M. Thim, President, on behalf of Thim Utility Co.; and

Christopher Kempley, Assistant Chief Counsel, Legal Division, on behalf
of the Utilities Division of the Arizona Corporation Commission.

BY THE COMMISSION:

On October 29, 1997, Thim Utility Company ("TUC") filed with the Arizona Corporation Commission ("Commission") an application for an extension to its Certificate of Convenience and Necessity ("Certificate"). On January 8, 1998, the Commission's Utilities Division Staff ("Staff") filed its Staff Report recommending approval. A hearing to consider the Extension Application was held on March 24, 1998. Mr. Robin Thim, owner, testified on behalf of TUC and Mr. Patrick Williams testified for Staff.

DISCUSSION

TUC provides water service to approximately 240 customers in an area located approximately 20 miles southwest of Tucson near the community of Three Points in Pima County, Arizona. In this application, TUC seeks to add a one-quarter section of land located approximately twelve miles west of downtown Tucson. The requested extension area, and its 14 existing customers, are currently being served water by the Lazy B Water Company ("Lazy B") owned by Mr. John Baker. The Lazy B does not hold a Certificate for the area.

On February 17, 1998, Mr. Baker filed a written request that the hearing on this matter be

1 continued because he was incarcerated and awaiting trial and charged that TUC's application was
2 "stealing" his business. TUC responded to Mr. Baker's request on March 16, 1998; Staff responded on
3 March 18, 1998. TUC and Staff noted that Mr. Baker had not intervened in this matter and had not been
4 granted a Certificate for the area in question, and further, that TUC did not plan to utilize Lazy B
5 facilities to provide service to the residents of the area. For the foregoing reasons, Mr. Baker's request
6 was denied and the hearing proceeded as scheduled. Neither Mr. Baker nor his representative appeared
7 at the hearing.'

8 The Lazy B

9 In Decision No. 58527 (February 2, 1994) the Commission denied the Lazy B a Certificate but
10 retained jurisdiction over the Lazy B as a public service corporation. In denying the Certificate, the
11 Commission found that the Lazy B: 1) was not in compliance with Arizona Department of Environmental
12 Quality ("ADEQ") nor Pima County Department of Environmental Quality ("PCDEQ") regulations; 2)
13 did not provide the Commission with a current balance sheet and income statement nor a personal
14 financial statement for Mr. Baker; 3) did not provide the Commission with a legal description for the
15 requested area; and 4) that numerous customers complaints had been filed against Lazy B and Lazy B's
16 customer service had been less than adequate. The Lazy B's most recent rate case was determined in
17 Decision No. 60278 (July 2, 1997), at which time the Commission found that the Lazy B still had not
18 complied with ADEQ or PCDEQ regulations and that there remained several unresolved customer service
19 complaints.

20 On June 20, 1997, Mr. Baker was arrested and incarcerated on charges unrelated to the operation
21 of the Lazy B. Following his arrest, Mr. Baker did not make arrangements for the management of the
22 day-to-day operations of the Lazy B. In response to Mr. Baker's inaction, the Commission issued a
23 Complaint and Order to Show Cause; and Order for Temporary Relief Pending Hearing (Decision No.
24 60263, July 1, 1997) against Mr. Baker and Lazy B. In that Decision, the Commission directed and
25 authorized Staff to find a certified operator to run the Lazy B system. Subsequently, Staff authorized
26 TUC to operate the Lazy B system as an interim operator. In Decision No. 60896 (May 22, 1998) the
27

28 The hearing was scheduled at a time when the Pima County Adult Detention Center had informed the Commission that Mr. Baker could have access to a telephone.

Commission found that Mr. Baker had violated Commission rules by failing to provide for the continuing operation of the Lazy B system after he had been arrested. The Commission assessed a \$5,000 administrative penalty against Mr. Baker.

TUC's Proposal

If granted the requested extension, TUC would operate the system as a separate division of its existing operation. TUC requested that it be permitted to charge Lazy B's authorized rates in the extension area because the system would not be interconnected with TUC's existing system due to the substantial distance between the two systems. TUC plans to provide service by obtaining an easement from the property owner of the well that serves the area. TUC would equip the well with its own pump, related equipment, a pressure tank, and would construct new mains and service lines to serve customers. TUC will finance the capital improvements by means of a short term note, or additional paid in capital.

TUC provided notice of the application and hearing to the property owners in the area and to Lazy B customers. No objections to the application were received. TUC has obtained a Pima County franchise for the area. TUC is current on its property taxes, and is in compliance with ADEQ and with Commission filing requirements.

Staff recommended approval of the application and that TUC be authorized to charge the existing rates and charges authorized for the Lazy B. Staff also recommended that: 1) TUC notify the customers thirty days in advance of beginning construction; 2) inform customers if they need to take special action during construction; 3) notify them of the expected date TUC will provide service; and 4) notify them of the authorized rates. Staff also recommended that TUC notify the Commission of the date service would be cut over from the Lazy B to TUC, and that as of the date TUC begins providing service, TUC be removed as interim operator of the Lazy B without further Order of the Commission. We concur with Staff's recommendations.

* * * * *

Having considered the entire record herein and being fully advised in the premises, the Commission finds, concludes, and orders that:

FINDINGS OF FACT

1. TUC provides water utility service to approximately 240 customers near the community

1 of Three Points, about 20 miles southwest of Tucson in Pima County, Arizona, pursuant to authority
2 granted in Decision No. 32443 (August 23, 1960).

3 2. On October 29, 1997, TUC filed an application to extend its Certificate to include a
4 quarter-section of land located approximately 12 miles west of Tucson in Pima County, Arizona.

5 3. The area TUC seeks to certificate is currently being served by the Lazy B Water
6 Company, a public service corporation. The Commission has not granted the Lazy B a Certificate for
7 the area.

8 4. On June 20, 1997, Mr. Baker, the owner of the Lazy B, was arrested and he remains
9 incarcerated pending trial. Upon his arrest, Mr. Baker did not arrange for the day-to-day operations of
10 Lazy B. As a result, pursuant to Commission Decision No. 60263, TUC was appointed interim operator
11 of the Lazy B. On May 22, 1998, the Commission issued Decision No. 60896 which assessed
12 administrative penalties in the amount of \$5,000 against Mr. Baker for abandoning the Lazy B system.

13 5. On January 8, 1998, Staff filed its Staff Report recommending approval of TUC's
14 application.

15 6. By Procedural Order dated January 20, 1998, a hearing on the application was set for
16 March 24, 1998.

17 7. TUC mailed notice of the hearing by First Class U.S. Mail to all customers and property
18 owners.

19 8. On February 17, 1998, Mr. Baker requested that the hearing be continued until the
20 conclusion of his trial on the grounds that granting TUC a certificate would be "stealing" his business.

21 9. Staff and TUC filed responses to Mr. Baker's request for a continuance on March 18 and
22 March 16, 1998, respectively. Staff and TUC opposed Mr. Baker's request on the grounds that Mr. Baker
23 had not intervened in this matter, Mr. Baker did not hold a Certificate for the area and TUC did not plan
24 to use Lazy B facilities to provide service to residents of the area.

25 10. Mr. Baker's request was denied and the hearing convened March 24, 1998, as scheduled.

26 11. TUC has a Pima County franchise covering the proposed extension area.

27 12. TUC will obtain its own easement from the property owner of the well that serves the
28 Lazy B area and will equip the well with a pump, related equipment, and a pressure tank and will

construct new mains and service lines.

13. TUC will finance the improvements with either a short term loan or additional paid in capital.

14. TUC is current on its taxes and is in compliance with Commission and ADEQ rules.

15. In addition to recommending approval of the application, Staff recommended that 1) TUC charge the existing rates and charges of the Lazy B system; 2) TUC inform the customers 30 days in advance of beginning construction; 3) inform them if they need to take any special actions during construction; and 4) notify them of the expected date TUC will provide service and the authorized rates for the area. Staff further recommended that TUC notify the Commission in writing of the date it will commence providing service and that TUC be removed as interim operator of the Lazy B as of the date it begins providing service, without further action of the Commission.

16. Staff's recommendations as set forth in Findings of Fact No. 15 are reasonable.

CONCLUSIONS OF LAW

1. TUC is a public service corporation within the meaning of Article XV of the Arizona Constitution and A.R.S. §§40-281, 40-282, 40-301 and 40-302.

2. The Commission has jurisdiction over TUC and the subject matter of the application.

3. Notice of the hearing was given in accordance with the law.

4. TUC is a fit and proper entity to receive an amended Certificate to include the extension area.

ORDER

IT IS THEREFORE ORDERED that the application of Thim Utility Company for an extension to its Certificate of Convenience and Necessity to include the area described in Exhibit A attached hereto and incorporated herein by reference, is granted.

IT IS FURTHER ORDERED that Thim Utility Company shall continue to provide service to the residents of the Lazy B area as the interim operator of the Lazy B Water Company until TUC is ready and able to provide service using its own facilities.

IT IS FURTHER ORDERED that Thim Utility Company notify customers 30 days prior to commencing construction and inform customers of any actions customers will need to take during

construction; the date Thim Utility Company will begin providing service; and the authorized rates for the area.

IT IS FURTHER ORDERED that Thim Utility Company shall notify the Commission of the date on which it will commence providing service using its own facilities.

IT IS FURTHER ORDERED that as of the date Thim Utility Company commences operations using its own facilities, Thim Utility Company shall be removed as interim operator of the Lazy B system without further Order of the Commission.

IT IS FURTHER ORDERED that Thim Utility Company shall charge the existing rates and charges of the Lazy B Water Company in the extension area until further Order of the Commission.

IT IS FURTHER ORDERED that this Decision shall become effective immediately.

BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

James H. Davis
COMMISSIONER - CHAIRMAN

Carl H. Krensch
COMMISSIONER

IN WITNESS WHEREOF, I, JACK ROSE, Executive Secretary of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of the Commission to be affixed at the Capitol, in the City of Phoenix, this 19 day of June, 1998.

for *Shawn R. Buckley*
JACK ROSE
EXECUTIVE SECRETARY

DISSENT _____
JR/dap

1 SERVICE LIST FOR: THIM UTILITY COMPANY

2 DOCKET NO.: W-03293A-97-0596

3 Robin Thim
4 THIM UTILITY CO.
5 P.O. Box 13145
6 Tucson, AZ 85732

7 Paul Bullis, Chief Counsel
8 Legal Division
9 ARIZONA CORPORATION COMMISSION
10 1200 West Washington Street
11 Phoenix, Arizona 85007

12 Director, Utilities Division
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14 1200 West Washington Street
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PIMA	30	14S	12E
COUNTY	SECTION	TOWNSHIP	RANGE

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THE NORTHWEST 1/4 OF SECTION 30
TOWNSHIP 14S, RANGE 12E, G+S.R.M.:
ALL IN PIMA COUNTY, ARIZONA

DECISION NO. 60974